IN THE HIGH COURT OF JUDICTURE FOR RAJASTHAN AT JODHPUR.

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Dinesh Kumar. Versus Union of India & ors.

S.B. Civil Writ Petition No. 278/2007

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Date of Order: February 08, 2007

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. B. Bhushan, for the petitioner.

BY THE COURT:

By the instant writ petition under Article 226 of the Constitution of India, the petitioner has challenged the order Annx.P/2 dated 17-11-1995 passed by the respondents by way of filing the writ petition on 15-1-2007, i.e. after the delay of more than eleven years.

In Bhoop Singh Vs. Union of India & ors., AIR 1992 SC 1414, the Hon'ble Supreme Court observed that the services of the petitioner therein along with many other persons were

terminated. Petitioner therein challenged his termination order after 22 years without explaining the inordinate delay. The Hon'ble Supreme Court held that his challenge cannot be allowed merely because others similarly dismissed persons had been reinstated. The Apex Court held as under:-

> "It is expected from a Government servant who has a legitimate claim to approach the Court for the relief he seeks within a reasonable period, assuming no fixed period of limitation applies. This is necessary to avoid dislocating the administrative set-up after it has been functioning on a certain basis for years. During the interregnum those who have been working gain more experience and acquire rights which cannot be defeated casually by collateral entry of a person at a higher point without the benefit of actual experience during the period of his absence when he chose to remain silent for years before making the claim. Apart from the consequential benefits of reinstatement without actually working, the impact on the administrative set-up and on other employees is a strong reason to decline consideration of a stale claim unless the delay is satisfactorily explained and is not attributable to the claimant. This is a material fat to be given due weight while considering the argument of discrimination in the present case for deciding whether the petitioner is in the same class as those who challenged their dismissal several years earlier and were consequently granted the relief of reinstatement. In our opinion, the lapse of a much longer unexplained period of several years in the case of the petitioner is a strong reason not to classify him with the other dismissed constables who approached the Court earlier and got reinstatement."

> The Hon'ble Supreme Court further held as under:-

> "There is another aspect of the matter. Inordinate and unexplained delay or laches is by itself a ground to refuse relief to the petitioner, irrespective of the merit of his claim. If a person entitled to a relief chooses to remain silent for long, he thereby gives

> rise to a reasonable belief in the mind of others that he is not interested in claiming that relief. Others are then justified in acting on that behalf. This is more so in service matters where vacancies are required to be filled promptly. A person cannot be permitted to challenge the termination of his service after a period of twenty-two years, without any cogent explanation for the inordinate delay, merely because others similarly dismissed had been reinstated as a result of their earlier petitions being allowed. Accepting the petitioner's contention would upset the entire service jurisprudence and we are unable to construe Dharampal (Lt. Governor of Delhi Vs. Dharampal, AIR 1990 SC 2059) in the manner suggested by the petitioner. Article 14 or the principle of non-discrimination is an equitable principle and, therefore, any relief claimed on that basis must itself be founded on equity and not be alien to that concept. In our opinion, grant of the relief to the petitioner, in the present case, would be inequitable instead of its refusal being discriminatory as asserted by learned counsel for the petitioner. We are further of the view that these circumstances also justify refusal of the relief claimed under Article 136 of the Constitution."

In Sudama Devi Vs. Commissioner & ors., (1983) 2 SCC , the issue of delay in filing the writ petition was considered by the Hon'ble Supreme Court and it was held as under:-

> "There is no period of limitation prescribed by any law for filing the writ petition under Article 226 of the Constitution. It is, in fact, doubtful whether any such period of limitation can be prescribed by law. In any event, one thing is clear and beyond doubt that no such period of limitation can be laid down either under the rules made by the High Court or by practice. For every use, it would have to be decided on the facts and circumstances whether the petitioner is guilty of laches and that would have to be done without taking into account any specific period as period of limitation. There must be cases where even short delay may be fatal while there may be cases where even a long delay may not be

evidence of laches on the part of the petitioner."

In State of U.P. Vs. Raj Bahadur Singh & Anr., (1988) 2 SCC 685, the Hon'ble Supreme Court held that there is no time limit for filing the writ petition. All that the Court has to see is whether the laches on the part of the petitioner are such as to disentitle him to the relief claimed by him.

In State of Orissa Vs. Lochan Nayak, (2003) 10 SCC 678, the Commissioner,in exercise of his power revoking the allotment of land in the year 1984, against which order the respondents therein filed a petition before the Orissa High Court in the year 1986. The High Court remanded the matter to the Revenue Officer and the Sub-Divisional Magistrate for deciding the matter afresh. In the same year, the Revenue Officer cancelled the allotment against. The respondents therein filed a petition against the said order in the year 1992. In the aforesaid facts and circumstances, the Hon'ble Supreme Court held that due to inordinate delay in filing the petitions, the High Court ought not to have entertained the writ petitions.

Since the order Annx.2 dated 17-11-1995 has been challenged by the petitioner by way of filing the writ petition on 15-1-2007, almost after lapse of more than eleven years and there is no explanation set forth by him explaining this inordinate delay of more than eleven years, the writ petition is liable to be

dismissed only on the ground of unexplained inordinate delay in view of the catena of decisions of the Hon'ble Supreme Court referred hereinabove.

The writ petition is dismissed on the ground of delay. There shall be no order as to costs.

(H.R. PANWAR), J.

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